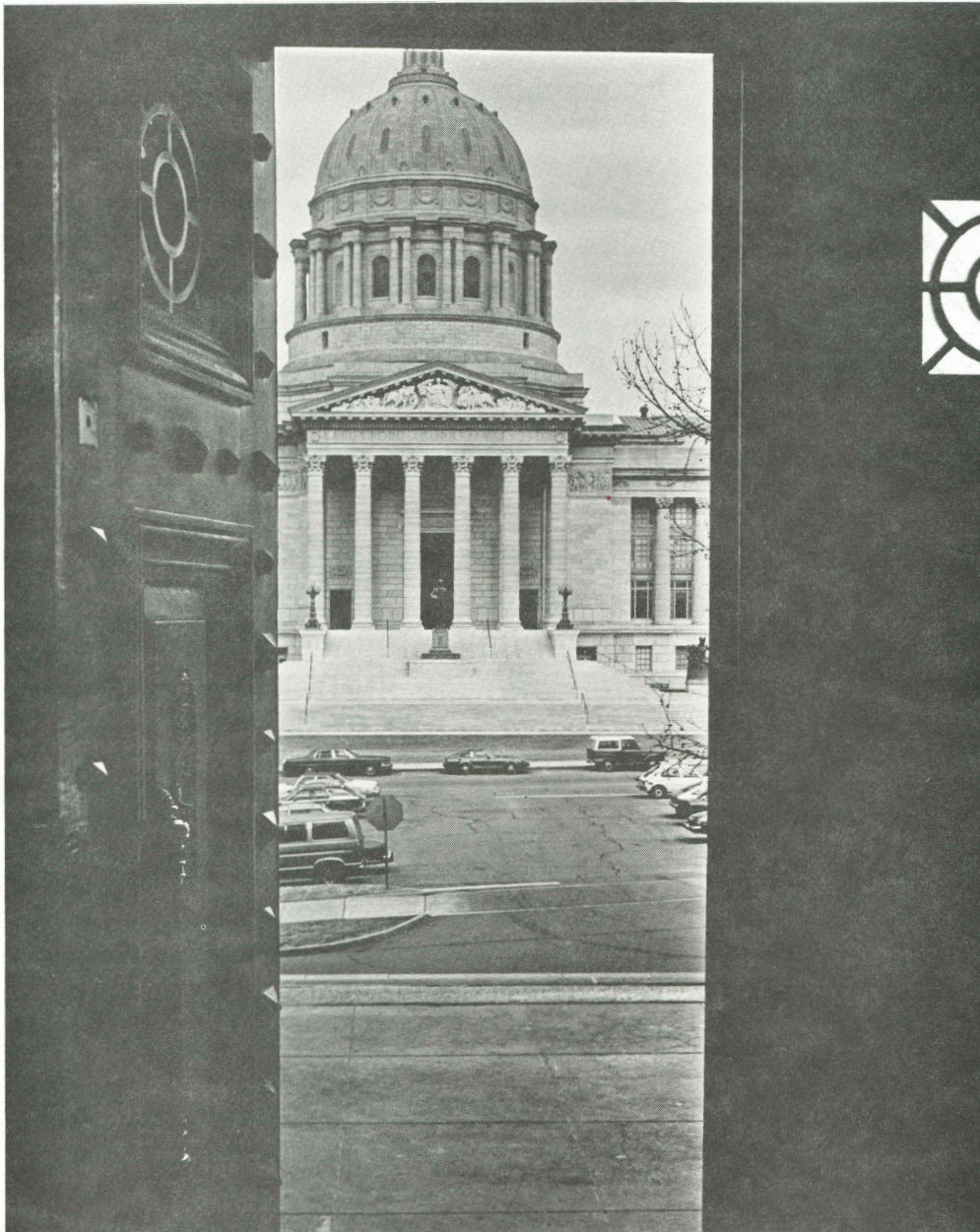


# The Revised S U N S H I N E L A W

From The Office of Missouri Attorney General William L. Webster



**"I think heroic  
deeds were all  
conceiv'd in  
the open air ..."**  
Walt Whitman  
*Leaves of Grass*

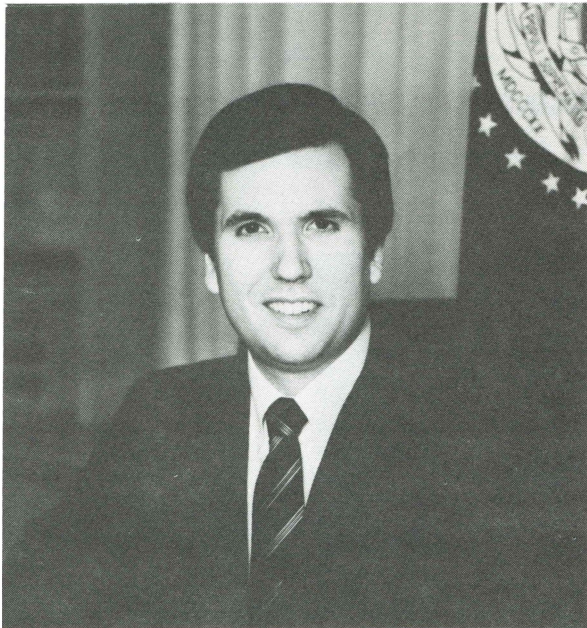
*"For The People"*

*Bob Lindholm*



# A Public Policy of Open Government

*Introduction by Attorney General William L. Webster*



**Attorney General  
William L. Webster**

This is the second publication about Missouri's Sunshine Law to be distributed by my office. In 1987, our state legislature, at my request, significantly amended Chapter 610, expressing a stronger commitment to openness in the operations of government. *The Revised Sunshine Law* replaces our earlier publication, incorporating the amendment.

The most important addition to the Sunshine Law is a statement of the public policy of Missouri that meetings, records, votes, actions and deliberations of government are open to the public. The law is to be liberally interpreted to achieve this purpose; exceptions to the law allowing a meeting, record or vote to be closed must be interpreted narrowly.

Each year, my office receives hundreds of inquiries from citizens, representatives of the news media and government officials concerning interpretation of the Sunshine Law. *The Revised Sunshine Law* contains many frequently asked questions and provides answers based upon opinions from this office and decisions from the courts. Of course, the Sunshine Law will continue to evolve as new cases are decided and the legislature responds to changing conditions.

Missouri's policy of openness will help to provide increased public understanding, participation and confidence in government. My office is committed to this policy.



# Inside:

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## The Revised Sunshine Law 1988

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From Missouri  
Attorney General  
William L. Webster

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The Revised  
Sunshine Law  
is published by the  
Office of the  
Attorney General,  
P.O. Box 899,  
Jefferson City,  
Missouri 65102.

### Local Government:

*A summary of the revised Sunshine Law.*

2-3

### Resolution:

*A sample policy regarding the release of information by a governmental body.*

4

### Meetings and Records:

*Most often asked questions about open meetings and open records. Answers based upon past Attorney General's opinions and legal research.*

5-10

### Sample Forms:

*Forms for public notices are provided for both open and closed meetings.*

11-14

### Chapter 610:

*The revised Sunshine Law as it appears in the Missouri statutes.*

15-20

### Reactions:

*To Missouri's Revised Sunshine Law.*

21



# *The Sunshine Law And* **Local Government**

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Missouri's commitment to openness in government is clearly stated in Section 610.011 of the revised Sunshine Law: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed to promote this public policy."

The revised law requires local governments and their subunits to draft a written policy concerning open meetings and open records.

"The written policy for local

governments should be simple and as brief as possible," Attorney General William L. Webster said. "Local governments should keep in mind that the philosophy behind the revised state law was one of openness ... that government should be conducted in full view of the public it represents."

A sample written policy and sample meeting notices, drafted in the Attorney General's office, are included in this booklet. Local governments may use this material to fulfill the requirements of the law.



*The county courthouse has long been a symbol of local government in Missouri. Above, the Howard County Courthouse stands in Fayette.*

## **The Sunshine Law: A Summary**

Missouri's revised Sunshine Law, which became effective on September 28, 1987, declares a new public policy: All governmental meetings and records are open unless specifically closed by law. The law sets out the specific instances where a meeting, record or vote may be closed, while stressing these exceptions are to be strictly interpreted to promote the public policy of openness.

Public meetings are to be held at reasonably convenient times and in places accessible to the public. Efforts should be made to grant the handicapped and disabled access to



the meeting.

At least 24 hours prior to a meeting, a notice of the meeting is to be prominently posted in the office of the body holding the meeting. If there is no such office, the notice should be posted at the place of the meeting. The notice must include:

- the time of the meeting,
- the date of the meeting,
- the place of the meeting,
- a tentative agenda of an open meeting,
- whether the meeting is open or closed.

If exceptional circumstances prevent 24 hours prior notice or prevent the meeting being held at a convenient time or in a place reasonably accessible to the public, the reasons should be stated in the minutes.

Unless otherwise provided by law, records of a public governmental body are to be open and available to the public for copying. A reasonable fee may be charged for providing access to or providing copies of public records. The fee is not to exceed actual costs of the document search and duplication.

Each public governmental body is to appoint a custodian for the records. The revised Sunshine Law requires that each request for access to a public record be acted on no later than the end of the third business day following the date the request is received by the custodian. If access to the public record is not granted, the custodian, upon request, is to provide a written statement explaining why access is not granted.

In certain circumstances specifically set out in the statutes, a public governmental body is permitted, but not required, to close its meetings, records and votes. Among the exceptions to the requirement for openness are meetings, records and votes relating to:

- litigation,

- leasing, purchase or sale of real estate where public knowledge might adversely affect the transaction,

- hiring, firing, disciplining, or promoting an employee,

- welfare cases of identifiable individuals,

- software codes for electronic data processing,

- individually identifiable personnel records,

- records which are protected from disclosure by other law.

When a public governmental body votes to meet in closed session, members are to cite a specific section under the law for taking such action. Only the topic cited for closing the meeting can be discussed during the closed session.

A court action to enforce the Sunshine Law can be brought by any aggrieved person, taxpayer or citizen or the Attorney General or the county prosecuting attorney. The suit must be filed in the circuit court for the county where the public governmental body has its principal place of business.

If the court finds a public governmental body has violated the Sunshine Law, it may declare void any action taken in violation of the law. If the court finds a member of a public governmental body has purposely violated the Sunshine Law, the court may:

- subject the member to a civil fine up to \$300,

- order payment by such member of all costs and reasonable attorney's fees to any party successfully establishing a violation.

If a public governmental body has any doubt about the legality of closing a particular meeting, record or vote, it is authorized to bring suit in the circuit court to determine whether the action is proper or it may seek a formal opinion of the Attorney General or an attorney for the public governmental body.



## SAMPLE POLICY: A REQUIREMENT OF THE REVISED SUNSHINE LAW

Below is a sample policy that may be adopted by public governmental bodies as required by Section 610.028, RSMo.

# RESOLUTION

**WHEREAS**, Section 610.023.1, RSMo, provides that a public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records and the identity and location of the custodian is to be made available upon request, and

**WHEREAS**, Section 610.025, RSMo, provides that a public governmental body may prescribe reasonable fees for providing access to or furnishing copies of public records, however, the fees shall not exceed the actual cost of document search and duplication;

**WHEREAS**, Section 610.028.2, provides that a public governmental body shall provide a reasonable written policy in compliance with Sections 610.010 to 610.030, RSMo, commonly referred to as the Sunshine Law, regarding the release of information on any meeting, record or vote.

### NOW, THEREFORE, BE IT RESOLVED:

1. That \_\_\_\_\_

(insert name of custodian) be and hereby is appointed custodian of the records of \_\_\_\_\_

(insert name of public governmental body)

and that such custodian is located at \_\_\_\_\_

(insert specific location including room, street, address, city and state).

2. That said custodian shall respond to all requests for access to or copies of a public record within the time period provided by statute except in those circumstances authorized by statute.

3. That the fees to be charged for access to or furnishing copies of records shall be as hereinafter provided, which fees have been determined to not exceed the actual cost of document search and duplication.

4. That it is the public policy of \_\_\_\_\_

(insert name of public governmental body) that meetings, records, votes, actions, and deliberations of this body shall be open to the public unless otherwise provided by law.

5. That \_\_\_\_\_

(insert name of public governmental body) shall comply with Sections 610.010 to 610.030, RSMo, the Sunshine Law, as now existing or hereafter amended.



# *Questions and Answers about open* **Meetings and Records**

The Attorney General and his assistants field hundreds of questions each year concerning open meetings and open records.

Although the revised Sunshine Law deals more specifically with open records and open meetings than its predecessor, case law still determines how the statute will be interpreted.

In most cases, questions from the public concerning actions of a specific governmental body that may be perceived as a violation of the Sunshine Law may be answered only in general terms. The following questions are most often asked by the public.

## **A. What Public Bodies Are Covered by The Sunshine Law?**

**Question No. 1:** Are advisory committees, boards and commissions subject to the Sunshine Law?

**Answer:** Section 610.010(2) specifically includes such entities in the definition of a "public governmental body".





**Question No. 2:** When a public governmental body forms a committee or subcommittee from its own membership, is that group also subject to the Sunshine Law?

**Answer:** Section 610.010(2) also defines as a "public governmental body" any committee appointed by or under the direction or authority of any of the public governmental bodies listed in the statute.

**Question No. 3:** Does the Sunshine Law apply to the judiciary?

**Answer:** Section 610.010(2) defines a public governmental body as "any legislative, administrative, governmental entity created by the constitution or statutes of this state ... "This language has been interpreted by the Missouri Court of Appeals as removing the judiciary from the operation of the Sunshine Law. See *Remington v. City of Boonville*, 701 S.W. 2d 804, 807 (Mo. App., 1985)

**Question No. 4:** Does the Sunshine Law apply to private, not-for-profit corporations or civic organizations?

**Answer:** In some instances, the Sunshine Law does apply. Section 610.010(2) includes "quasi-public governmental bodies" in the definition of entities under the Sunshine Law.

A quasi-public governmental body includes corporations organized or authorized to do business in Missouri under the provisions of Chapters 352, 353 or 355 of the Missouri Revised Statutes or unincorporated associations which (a) perform a public function and (b) have as their primary purpose to enter into contracts with public governmental bodies or to engage primarily in activities carried out pursuant to agreements with public governmental bodies. Attorney General's Opinion No. 27-87 concluded that area

agencies on aging are quasi-public governmental bodies. These not-for-profit agencies, incorporated under Chapter 355, have a primary purpose of entering into contracts with the Division of Aging, and their function is to develop area plans for programs of services to older individuals.

**Question No. 5:** Is a student government association of a state college or university a public governmental body?

**Answer:** Attorney General's Opinion No. 67-87 concluded the Student Government Association of Southwest Missouri State University is not normally a public governmental body. However, the Sunshine Law may be applicable to the Student Government Association when it participates, following delegation of authority by the Board of Regents, in decisions beyond the boundaries of policies, rules and regulations formulated by the Board of Regents. Also, the Sunshine Law may be applicable when the Student Government Association exercises independent authority tacitly approved or summarily accepted by the Board of Regents.

## **B. To What Actions or Activities Is The Sunshine Law Applicable?**

**Question No. 6:** Does the Sunshine Law apply to luncheon meetings of members of a public governmental body where public business is discussed?

**Answer:** Section 610.010(3) defines a public meeting as any meeting of a public governmental body where public business is discussed or decided or public policy is formulated. Attorney General's Opinion No. 10 (February 11, 1975) concluded that luncheon meetings of either the majority party members or minority party members

of the St. Louis County Council where public business was discussed were required to be open to the public pursuant to the Sunshine Law. Section 610.010(3) specifically provides, however, that informal gatherings of members of a public governmental body for social or ministerial purposes where there is no intent to avoid the Sunshine Law are not "public meetings".

**Question No. 7:** Is a coroner's inquest a public meeting under the Sunshine Law?

**Answer:** A coroner's jury constitutes a public governmental body, and the inquest conducted by the coroner pursuant to Chapter 58 of the Revised Statutes of Missouri is a public meeting. Attorney General's Opinion Letter No. 48 (December 6, 1979).

**Question No. 8:** Is a meeting between members of a public governmental body and an employee of that body to receive a report concerning ongoing business subject to the Sunshine Law?

**Answer:** Section 610.010(3) defines a public meeting as any meeting of a public governmental body where "any public business is discussed, decided, or public policy formulated." Attorney General's Opinion No. 73 (April 5, 1979) concluded that a meeting between a school district board of education and the superintendent of schools to receive a report from the superintendent was a public meeting because public business was discussed.

## **C. What are the Procedural Requirements of the Sunshine Law?**

**Question No. 9:** What are the notice requirements of the Sunshine Law?

**Answer:** Section 610.020.1 requires a public governmental body to give notice of the time, date and place of each meeting and its tentative agenda in a manner reasonably calculated to inform the public of the matters to be discussed. Section 610.020.2 states this notice must be given at least 24 hours prior to the meeting, unless for good cause such notice is impossible. The notice must be posted prominently in the principal office of the body holding the meeting, or if there is no such office, in the building where the meeting will be held. Reasonable notice includes making copies of the notice available upon request to representatives of the news media.

If a meeting must be held on less than 24 hours notice, the minutes of the meeting should state the reasons why it was not possible to give such notice.

**Question No. 10:** What are the procedures for obtaining access to public records?

**Answer:** Each public governmental body must appoint a custodian of records responsible for maintaining the body's records and for handling requests. See Section 610.023.1. All public records, unless closed by law, must be made available for public inspection and copying. When a request is made for access to a public record, the records custodian must allow access as quickly as possible, but no later than the close of business of the third business day following the date of the request.

If access to a public record is not granted immediately, the records custodian, upon request, must explain in writing why the record cannot be produced without delay and give the place and earliest date and time the record will be



made available. See Section 610.023.3. There may be times when, for example, a request is made for an old record that is stored in a different location or will take time to research and locate. In such instances, when reasonable cause for delay is explained, the period for producing the record may exceed three days.

**Question No. 11:** How much can a public governmental body charge for producing copies of public records, and can the records custodian require the person requesting the record to make copies?

**Answer:** The amount to be charged for copies is to be determined by the public governmental body. However, in setting an amount, the body must follow the requirements of Section 610.026.1(1) by setting reasonable fees not to exceed "the actual cost of document search and duplication". The public governmental body may waive or reduce its fees when it is in the public interest to do so.

As record storage becomes more and more automated, public governmental bodies must follow Section 610.026.1(2) which provides the fees for providing access to records maintained on computer facilities, tapes, discs or other such equipment must include only the cost of copies and the staff time required for making copies.

Under Section 610.023.2 a public governmental body is required to "make available for inspection and copying by the public" the body's public records. Therefore, the policy adopted by the public governmental body may provide for the requester to photocopy records made available by the custodian.

**Question No. 12:** What procedures

must be followed to close a record or a meeting?

**Answer:** It is the public policy of this state, that all public meetings and records shall be open unless otherwise provided by law. See Section 610.011.1. Therefore, meetings and records may be closed only if they relate to the specific statutory exceptions set out in Section 610.021 and discussed in the next subtopic of this booklet.

If a public record is related to one or more of the statutory exceptions and may be closed, the public governmental body must follow the procedures discussed in the case of *Tipton v. Barton*, 747 S.W. 2d 325 (Mo. App., 1988). The Court of Appeals, based upon a provision of the 1986 Sunshine Law, required an affirmative vote to close the records be made at a public meeting, and reference be made to the statutory exception the body relied upon in closing the record. Such votes should be taken as early as possible, since the court held it significant that the records in question were not closed until nearly a month after access to them had been requested. The provision relied upon by the court in *Tipton* was repealed in the 1987 amendments to the Sunshine Law. However, the written policy of the public governmental body should explain its procedures concerning release of records, and identify records which may be closed.

If a public meeting is related to one or more of the statutory exceptions and may be closed, the public governmental body must follow the procedures set out in Section 610.022. Section 610.022.3 requires that the meeting be closed only to the extent necessary to discuss the specific announced exception. No other business should be discussed during the closed meeting.

A public governmental body planning to hold a closed meeting or vote should follow the notice procedures for a regular meeting set out in Section 610.020 adding that the meeting will be closed and making references to the specific exception allowing the meeting to be closed. See Section 610.022.2.

Section 610.022.1 provides before a meeting or a vote is closed there must be an affirmative public vote to close made by a majority of a quorum of the public governmental body. The specific reason for closing the meeting must be announced publicly at an open meeting and entered into the minutes.

## **D. Are there Specific Statutory Exceptions To The Sunshine Law?**

**Question No. 13:** Can disciplinary action be taken against a public employee in a closed meeting and can the public find out what action was taken?

**Answer:** Under Section 610.021(3) of the revised Sunshine Law, a public governmental body can close a meeting about the disciplining of an employee.

But the vote on any final decision to discipline an employee must be made available to the public within 72 hours after the closed meeting in which such action occurred. The employee must be given notice of the action before the decision is made available to the public.

**Question No. 14:** Can a public governmental body close a meeting to discuss with its attorney possible litigation where a cause of action has not been filed?

**Answer:** Section 610.021(1) provides a meeting may be closed to

discuss legal actions, causes of action or litigation involving the public governmental body or privileged communications between the public governmental body and its attorneys. Attorney General's Opinion Letter No. 59 (March 10, 1976) concluded a meeting could be closed to discuss causes of action where the public governmental body is a potential plaintiff or defendant whether or not litigation had already commenced.

However, under Section 610.021(1), any vote relating to litigation must be made public upon final disposition of the matter voted upon. In matters concerning the exercise of the power of eminent domain, the vote must be made public immediately following action on the motion to authorize the legal action.

**Question No. 15:** Can a public governmental body close a meeting to discuss the purchase of real estate?

**Answer:** Section 610.021(2) provides a meeting may be closed to discuss leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction could adversely affect the transaction. However, any vote approving a contract relating to such matters must be made public upon execution of the transaction.

**Question No. 16:** Can a meeting be closed to allow a public governmental body to discuss whether public employees will participate in seminars or training programs?

**Answer:** Section 610.021(3) allows a meeting to be closed for discussion of hiring, firing, disciplining or promoting an employee. Because participation in a seminar does not fit these specific categories, the discussion should occur in an open meeting.



## **E. What are the Sanctions And Penalties For Noncompliance?**

**Question No. 17:** Who can bring an action charging a public governmental body or its members with a violation of the Sunshine Law?

**Answer:** Section 610.027.1 provides that an action seeking judicial enforcement of the Sunshine Law may be brought by any aggrieved person, taxpayer to, or citizen of this state or by the prosecuting attorney or the Attorney General. The suit must be filed in the circuit court in the county where the public governmental body has its principal place of business.

**Question No. 18:** If a court finds a public governmental body has acted in violation of the Sunshine Law, what happens?

**Answer:** Under Section 610.027.4, if a court finds by a preponderance of the evidence that any provision of the Sunshine Law has been violated by a public governmental body, the court may declare void any action taken in violation of the law if it concludes the public interest in enforcement of the Sunshine Law outweighs the public interest in allowing the action to stand.

**Question No. 19:** What remedy exists against members of a public governmental body who violate the Sunshine Law?

**Answer:** If a court finds by a preponderance of the evidence that a member of a public governmental body has purposely violated the Sunshine Law, it may order the member to pay a civil fine in an amount not to exceed \$300. In addition, the court may order the member to pay all costs and reasonable attorney

fees to any party successfully establishing a violation of the Sunshine Law.

**Question No. 20:** How can a public governmental body and its members demonstrate it has acted in compliance with the Sunshine Law?

**Answer:** Under Section 610.027.2, once a party seeking judicial enforcement of the Sunshine Law has established the entity involved is a public governmental body, the burden is on the body and its members to demonstrate its compliance with the Sunshine Law.

Under Section 610.028.2, public governmental bodies are required to establish and provide for public inspection a reasonable written policy concerning the release of information concerning any meeting, record or vote. An employee acting in compliance with this written policy will not be subject to civil liability.

The public governmental body should maintain in its records the notices of meetings posted in accordance with Section 610.020.

Its minutes should reflect the reasons why a meeting was held on less than 24 hours notice or at a time or place that was not reasonably convenient and accessible to the public. See Section 610.020.3. The minutes should also include the vote of each member of a public governmental body to close a meeting, vote or record and the specific statutory exception relied upon to close. See Section 610.022.1. During a closed session, copious minutes of the discussion should be taken so that, if necessary, they can be used to demonstrate the discussion was limited to the reason announced for closing the meeting.

# NOTICE OF OPEN MEETING

\_\_\_\_\_  
(date and time notice was posted)

Notice is hereby given that the \_\_\_\_\_

\_\_\_\_\_  
(name of public governmental body) will conduct a meeting at \_\_\_\_\_ (time)  
on \_\_\_\_\_ (date), 19\_\_, at \_\_\_\_\_ (place where meeting is to  
be held). The tentative agenda of this meeting includes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representatives of the news media may obtain copies of this notice by contacting:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

(This is a suggested form and has not been approved by the judiciary as meeting the requirements of the Sunshine Law.  
This form is intended for use when a public governmental body plans to conduct an open meeting.)



# NOTICE OF CLOSED MEETING

---

\_\_\_\_\_  
(date and time notice was posted)

Notice is hereby given that the \_\_\_\_\_

\_\_\_\_\_  
(name of public governmental body), having duly voted to close its upcoming meeting, as  
authorized by \_\_\_\_\_

(statutory authority to close meeting) will conduct a closed meeting at \_\_\_\_\_

(time) on \_\_\_\_\_ (date), 19\_\_, at \_\_\_\_\_

\_\_\_\_\_  
(place where meeting is to be held).

Representatives of the news media may obtain copies of this notice by contacting:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

(This is a suggested form and has not been approved by the judiciary as meeting the requirements of the Sunshine Law. This form is intended for use when a public governmental body has previously publicly voted to close its meeting and otherwise acted in conformity with state law.)

# NOTICE OF VOTE TO CLOSE MEETING

\_\_\_\_\_  
(date and time notice was posted)

Notice is hereby given that the \_\_\_\_\_

\_\_\_\_\_  
(name of public governmental body) will conduct a meeting at \_\_\_\_\_ (time)  
on \_\_\_\_\_ (date), 19\_\_, at \_\_\_\_\_

\_\_\_\_\_  
(place where meeting is to be held). The tentative agenda of this meeting includes a vote to  
close this meeting pursuant to \_\_\_\_\_

(type of exemptions) in \_\_\_\_\_

(statutory authority for vote to close meeting).

Representatives of the news media may obtain copies of this notice by contacting:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

(This is a suggested form and has not been approved by the judiciary as meeting the requirements of the Sunshine Law. This form is intended for use when a public governmental body plans to conduct a closed meeting, but has not yet publicly voted to close the meeting and otherwise acted in conformity with state law.)



# NOTICE OF OPEN MEETING AND VOTE TO CLOSE PART OF THE MEETING

\_\_\_\_\_  
(date and time notice was posted)

Notice is hereby given that the \_\_\_\_\_  
(name of public governmental body) will conduct a meeting at \_\_\_\_\_  
(time) on \_\_\_\_\_ (date), 19\_\_, at \_\_\_\_\_  
(place where meeting is to be held). The tentative agenda of this meeting includes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
The tentative agenda of this meeting also includes a vote to close part of this meeting  
pursuant to \_\_\_\_\_  
(statutory authority for vote to close meeting).

Representatives of the news media may obtain copies of this notice by contacting:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

(This is a suggested form and has not been approved by the judiciary as meeting the requirements of the Sunshine Law. This form is intended for use when a public governmental body plans to conduct a meeting that is partially open and partially closed, but has not yet publicly voted to close the meeting and otherwise acted in conformity with state law.)

# The Sunshine Law and the Missouri Statutes

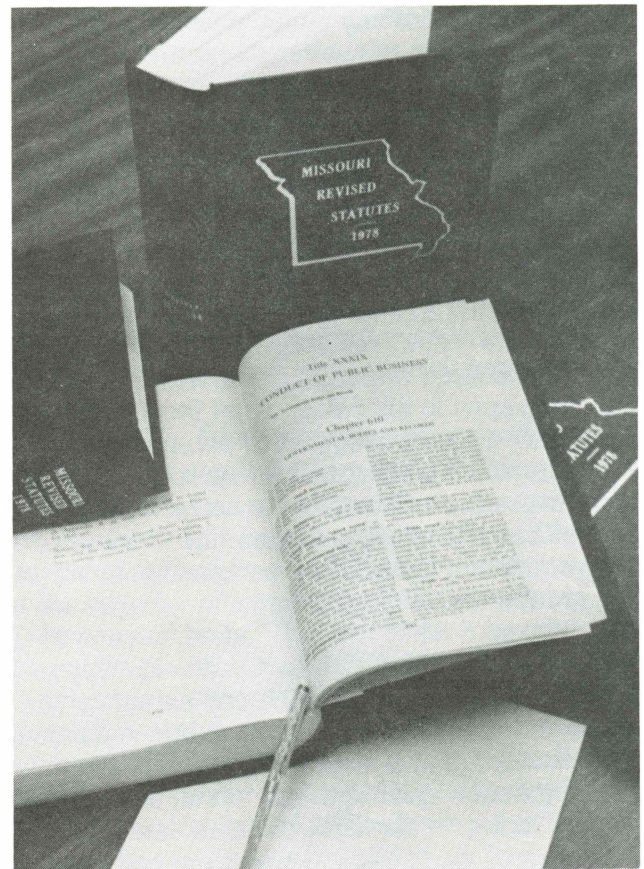
## Chapter 610

### Governmental Bodies and Records

**610.010. Definitions.**—As used in sections 610.010 to 610.030 and 610.100 to 610.115, unless the context otherwise indicates, the following terms mean:

(1) **"Closed meeting", "closed record", or "closed vote",** any meeting, record or vote closed to the public;

(2) **"Public governmental body",** any legislative, administrative governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, or by executive order, including any body, agency, board, bureau, council, commission, committee, board of regents or board of curators of any institution of higher education, supported in whole or in part from state funds, advisory committee or commission appointed by the governor by executive order, department, or division of the state, of any political subdivision of the state, of any county or of any municipal government, school district or special purpose district, any other legislative or administrative governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power, any committee appointed by or under the direction or authority of any of the above named entities and which is authorized to report to any of the above named entities, and any quasi-public governmental body. The term **"quasi-public governmental body"** means any corporation organized or authorized to do business in this state under the provisions of chapter 352, 353, or 355, RSMo, or unincorporated association which (a) performs a public function, and which (b) has as its primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; except urban redevelopment corporations organized or authorized to do business under the provisions of chapter 353, RSMo, which are



privately owned, operated for profit, and do not expend public funds;

(3) **"Public meeting",** any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated. The term "public meeting" shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of the chapter;

(4) **"Public record",** any record retained by or of any public governmental body including any



report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(5) **"Public vote"**, any vote cast at any public meeting of any public governmental body.

**610.011. Liberal construction of law to be public policy.**—1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.

2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

**610.015. Votes, how taken.**—Except as provided in section 610.021, and except as otherwise provided by law, all public votes shall be recorded, and if a roll call is taken, as to attribute each "yea" and "nay" vote, or abstinence if not voting, to the name of the individual member of the public governmental body, and all public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication.

**610.020. Notice of meetings, when required.**—1. All public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of a particular meeting and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal

office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.

3. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

4. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

5. If another provision of law requires a manner of giving specific notice of a meeting, hearing or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

**610.021. Closed meetings and records authorized, when—exceptions, parents and guardians to certain scholastic records and public access to certain personnel records.**—Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged



communications between a public governmental body or its representatives and its attorneys. However, any vote relating to litigation involving a public governmental body shall be made public upon final disposition of the matter voted upon provided however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate;

(3) Hiring, firing, disciplining or promoting an employee of a public governmental body. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice before such decision is made available to the public;

(4) The state militia or National Guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores, however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions

or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

(10) Software codes for electronic data processing and documentation thereof;

(11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;

(12) Sealed bids and related documents, until the earlier of either when the bids are opened, or all bids are accepted or all bids are rejected;

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest.

#### **610.022. Closed meetings, procedure and limitation—public records presumed open unless exempt.—1.**

Except as set forth in subsection 2 of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this act shall be announced publicly at an open meeting of the governmental body and entered into the minutes.

2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed under the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.

3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific



reason announced to justify the closed meeting or vote.

4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

5. Public records shall be presumed to be open unless otherwise exempt under the provisions of section 610.021.

**610.023. Records of governmental bodies to be in care of custodian, duties—records may be copied but not removed, exception, procedure—denial of access, procedure.**—1. Each public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records. The identity and location of a public governmental body's custodian is to be made available upon request.

2. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian.

3. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

4. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third business day following the date that the request for the statement is received.

**610.026. Fees for copying public records, limitations—fee money remitted to whom—tax, license or fee as used in Missouri Constitution Article X section 22 not to include copying fees.**—1. Each public

governmental body may prescribe reasonable fees for providing access to or furnishing copies of public records subject to the following:

(1) Fees for copying public records shall not exceed the actual cost of document search and duplication. Documents may be furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

(2) Fees for providing access to public records maintained on computer facilities, recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, shall include only the cost of copies and staff time required for making copies.

2. Payment of such copying fees may be requested prior to the making of copies.

3. Except as otherwise provided by law, each public governmental body of the state shall remit all moneys received by or for it from fees charged pursuant to this section to the director of revenue for deposit to the general revenue fund of the state.

4. Except as otherwise provided by law, each public governmental body of a political subdivision of the state shall remit all moneys received by it or for it from fees charged pursuant to sections 610.010 to 610.028 to the appropriate fiscal officer of such political subdivision for deposit to the governmental body's accounts.

5. The term "tax, license or fees" as used in section 22 of article X of the Constitution of the State of Missouri does not include copying charges and related fees that do not exceed the level necessary to pay or to continue to pay the costs for providing a service, program, or activity which was in existence on November 4, 1980, or which was approved by a vote of the people subsequent to November 4, 1980.

**610.027. Violations—remedies, procedure, penalty—validity of actions by governing bodies in violation—governmental bodies may seek interpretation of law, attorney general to provide.** 1. The remedies provided by this section against public governmental bodies shall be in addition to those



provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record, or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

3. Upon a finding by a preponderance of the evidence that a member of a public governmental body has purposely violated sections 610.010 to 610.027, the member may be subject to a civil fine in the amount of not more than three hundred dollars and the court may order the payment by such member of all costs and reasonable attorney's fees to any party successfully establishing a violation of sections 610.010 to 610.026.

4. Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in violation of sections 610.010 to 610.026 if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record, or vote. Suit for enforcement must be brought within six months from which the violation is ascertainable and in no event shall it be brought later than one year after the violation. This subdivision shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a public governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

5. A public governmental body which is in doubt about the legality of closing a particular meeting, record, or vote may bring suit at the expense of that public governmental body in the circuit court of the county of the public governmental body's principal place of business to ascertain the propriety of any such action, or

seek a formal opinion of the attorney general or an attorney for the governmental body.

**610.028. Legal defense of members of governmental bodies, when-written policy on release of information required-persons reporting violations exempt from liability and discipline.**—1. Any public governmental body may provide for the legal defense of any member charged with a violation of sections 610.010 to 610.030.

2. Each public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote and any member or employee of the public governmental body who complies with the written policy is not guilty of a violation of the provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of his adherence to the written policy of the agency.

3. No person who in good faith reports a violation of the provisions of sections 610.010 to 610.030 is civilly liable for making such report, nor, if such a person is an officer or employee of a public governmental body, may such person be demoted, fired, suspended or otherwise disciplined for making such report.

**610.030. (1980) Injunctive relief authorized.** The circuit courts of this state shall have the jurisdiction to issue injunctions to enforce the provisions of sections 610.100 to 610.115.

## **ARREST RECORDS**

**610.100. Arrest records, closed, when.**—If any person is arrested and not charged with an offense against the law within thirty days of his arrest, official records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records except as provided in section 610.120.

**610.105. Effect of nolle pros-dismissal-sentence suspended on record.**—If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as provided in section 610.120.



**610.106. Suspended sentence prior to September 28, 1981, procedure to close records.**—Any person as to whom imposition of sentence was suspended prior to September 28, 1981, may make a motion to the court in which the action was prosecuted after his discharge from the court's jurisdiction for closure of official records pertaining to the case. If the prosecuting authority opposes the motion, an informal hearing shall be held in which technical rules of evidence shall not apply. Having regard to the nature and circumstances of the offense and the history and character of the defendant and upon a finding that the ends of justice are so served, the court may order official records pertaining to the case to be closed, except as provided in section 610.120.

**610.110. Failure to recite closed record excused—exceptions.**—No person as to whom such records have become closed records shall thereafter, under any provision of law, be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose, except as provided in section 491.050, RSMo, and section 610.120.

**610.115. Penalty.**—A person who knowingly violates any provision of sections 610.100, 610.105, 610.106, or 610.120 is guilty of a class A misdemeanor.

**610.120. Records to be confidential—accessible to whom, purposes.**—Records required to be closed shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section. They shall be available only to courts, administrative agencies, law enforcement agencies, and federal agencies for purposes of prosecution, litigation, sentencing, parole consideration and to federal agencies for such investigative purposes as authorized by law or presidential executive order. All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book.

# Reactions:

## To Missouri's Revised Sunshine Law

### Positive Step ...

*"It's definitely a positive step. For the first time, the statute itself makes it clear that the public policy of the state is that records and meetings are to be open unless the law provides specific exemptions. And those exemptions are to be construed narrowly. The amendment also clarifies some areas that caused some confusion in the past."*

**--Scott Whiteside, vice-president of operations for the Kansas City Star**

### Put Some Teeth In The Law ...

*"As news media (representatives), we have a strong commitment to the public's right to know. The perfecting of an effective Open Meetings/Open Records Law of Missouri is a slowly evolving, never ending process. Generally speaking, we welcome the newest revision and the effort to put some teeth in the law."*

**--Ted Griffin, executive director of the Missouri Broadcasters Association**

### Clarity ...

*"The Sunshine Law revisions clarify the law and that's an improvement ... the procedures for gaining access to information are more clear. Government agencies and members of the media are advantaged by the clarity."*

**--Mary Schultz, Lewis and Rice law firm, legal counsel for Pulitzer Publishing**

### Definite Improvement ...

*"Until some governmental bodies devise ways to skirt the Open Meetings/Open Records Law, we will not know just how effective the new revision is. As it stands, this latest revision is a definite improvement. Not only does it clarify several areas of the law, but we are most impressed with the statement in the new law which sets forth -- for the first time -- that it is the public policy of this state that meetings, records, votes, actions and deliberations of governmental bodies are open to the public."*

**--Bill Bray, executive director of the Missouri Press Association**



# **The Missouri Revised Sunshine Law**

*Published by:*

***Missouri Attorney General***

***William L. Webster***

***P.O. Box 899***

***Jefferson City, Missouri 65102***

Bulk Rate  
U.S. Postage  
PAID  
Jefferson City, MO  
65102  
Permit No. 252

